



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 31 2019

BY CERTIFIED MAIL,
RETURN RECEIPT REQUESTED & ELECTRONIC MAIL

Neu Holdings U.S. Corporation
47 Parsippany Road
Whippany, NJ 07981

Re: Diamond Alkali Superfund Site, Lower 8.3 Miles of Lower Passaic River,
Essex and Hudson Counties, New Jersey

Notice of Potential Liability under 42 U.S.C. § 9607(a)

As you know, the U.S. Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675 (also known as the "Superfund" law). More information about CERCLA, including a copy of the Superfund law, may be found at www.epa.gov/superfund.

EPA has documented the release and threatened release of hazardous substances, pollutants and contaminants into the lower 8.3 miles of the Lower Passaic River, which is part of the Diamond Alkali Superfund Site (the "Site"), located in Essex and Hudson Counties, New Jersey. In response to the release and threatened release of hazardous substances into the environment at the Lower Passaic River Study Area, EPA has spent public funds and anticipates spending additional public funds.

In 1983, sampling at and in the vicinity of 80 Lister Avenue and in the Passaic River revealed high levels of dioxin. In 1984 after investigations by the state of New Jersey and the EPA, the Site was listed on the EPA Superfund program's National Priorities List ("NPL") established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. Dioxin, pesticides and other hazardous substances were found in the soil and groundwater at 80-120 Lister Avenue; and dioxin, polychlorinated biphenyls ("PCBs"), metals and pesticides were found in sediment in the Lower Passaic River.

In 1994, Occidental Chemicals Corporation ("OCC") signed an administrative order on consent with EPA to investigate a six-mile stretch of the Lower Passaic River, with the work performed by Tierra Solutions, Inc. on OCC's behalf. This investigation found contaminants that originated from the Diamond Alkali facility, in particular, 2,3,7,8-TCDD and pesticides, throughout the six miles, as well as other contaminants not necessarily linked to Diamond Alkali's operations, and showed that contaminated sediments moved into and out of the six-mile stretch of the Lower

Passaic River. As a result, in 2002 EPA expanded the scope of the investigation to include the entire 17-mile Lower Passaic River Study Area ("LPRSA").

Subsequently, EPA identified other potentially responsible parties ("PRPs") for the Lower Passaic River besides OCC, and a number of these PRPs formed the Cooperating Parties Group ("CPG"). In 2004, EPA signed a settlement agreement with the CPG in which the group agreed to pay for EPA to perform the RI/FS for the 17-mile LPRSA. That settlement agreement was amended in 2005 and again in 2007, adding more parties, for a total of over 70 parties.

Also in 2004, EPA and OCC signed an agreement in which, under EPA's oversight, OCC agreed to conduct a separate RI/FS of the Newark Bay Study Area (Newark Bay and portions of the Hackensack River, Arthur Kill and Kill van Kull), investigating the extent of contamination for the Site. Finally, also in 2004, EPA formed a partnership with the U.S. Army Corps of Engineers, New Jersey Department of Transportation, U.S. Fish and Wildlife Service, National Oceanic and Atmospheric Administration and New Jersey Department of Environmental Protection to conduct a joint study of the LPRSA. The goal of the partnership was, to the extent possible, to integrate the RI/FS being performed under the Superfund program with a Feasibility Study under the Water Resources Development Act.

From 2004 to 2007, EPA investigated contamination in sediment and water of the Lower Passaic River, and investigated the major tributaries, combined sewer overflows and stormwater outfalls to the river. In 2007, the CPG entered into a new agreement with EPA in which the group agreed to take over the performance of the 17-mile LPRSA RI/FS from EPA under EPA oversight. During the course of the 17-mile study, EPA concluded that since the lower 8.3 miles of the river contain the bulk of the contaminated sediment which is the source of most of the risks associated with the Lower Passaic River, addressing this portion of the river first would better support the overall protection of human health and the environment than would awaiting the outcome of the 17-mile RI/FS to make a decision for the entire Lower Passaic River. EPA undertook a targeted RI and focused feasibility study ("FFS") of the lower 8.3 miles. Sampling results from the RI/FFS demonstrate the presence of hazardous substances in sediments of the lower 8.3 miles of the Lower Passaic River including polychlorinated dibenzo-*p*-dioxins and furans (dioxins and furans), PCBs, polycyclic aromatic hydrocarbons, and dichlorodiphenyl-trichloroethane ("DDT") and its breakdown products, as well as other pesticides, mercury, lead and other metals. The contamination present in sediments throughout the lower 8.3 miles presents an unacceptable human health and ecological risk.

EPA issued the Record of Decision selecting a remedy for the lower 8.3 miles of the Lower Passaic River on March 4, 2016. The selected remedy includes the following elements: 1) an engineered cap will be constructed over the river bottom of the lower 8.3 miles of the river; 2) the river will be dredged bank-to-bank (approximately 3.5 million cubic yards) so the cap can be placed over the lower 8.3 miles without increasing flooding, and to allow for continued commercial use of the federally authorized navigation channel in the 1.7 miles of the river closest to Newark Bay; 3) dredged materials will be barged or pumped to a sediment processing facility in the vicinity of the Lower Passaic River/Newark Bay shoreline for dewatering, and dewatered materials will be transported to permitted treatment facilities and landfills in the United States or Canada for disposal; 4) mudflats dredged during implementation of the remedy

will be covered with an engineered cap consisting of one foot of sand and one foot of mudflat reconstruction substrate; 5) institutional controls will be implemented to protect the engineered cap, and New Jersey's existing prohibitions on fish and crab consumption will remain in place and will be enhanced with additional community outreach; 6) long-term monitoring and maintenance of the engineered cap will be required to ensure its stability and integrity; and 7) long-term monitoring of fish, crab and sediment will be performed to determine when interim remediation milestones, remediation goals and remedial action objectives are reached. The estimated cost of the cleanup project is \$1.38 billion.

Additional information about the Site, including the lower 8.3 miles of the Lower Passaic River, such as the RI/FFS reports and appendices, the Proposed Plan and the Record of Decision, can be found on EPA Region 2's website at <http://www.ourPassaic.org>

The documents that form the basis for EPA's selected remedy are contained in the administrative record, which is maintained at EPA's offices in New York City, and at the following administrative record repositories located near the Site:

Newark Public Library
5 Washington Street
Newark, New Jersey

Elizabeth Public Library
11 South Broad Street
Elizabeth, New Jersey

You may inspect copies of the administrative record during regular business hours at EPA's offices in New York City or at the local administrative record repositories identified above. The administrative record files can also be accessed online at:
<https://semspub.epa.gov/src/collection/02/AR63167>

Explanation of Potential Liability

Under Section 107(a) of CERCLA, responsible parties may be held liable for costs incurred by EPA (including interest) in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial, and enforcement actions. Responsible parties also may be subject to orders under Section 106 of CERCLA requiring them to take response actions themselves. Responsible parties under CERCLA include current owners or operators of a facility, past owners or operators of a facility at the time of disposal of hazardous substances, and persons who arranged for the treatment or disposal of hazardous substances which came to be located at a facility.

Based on information that EPA evaluated during the course of its investigation of the Site, EPA believes that hazardous substances were released from the former Whippany Paper Board Co., Inc. facility located at One Ackerman Avenue in Clifton, New Jersey, into the Lower Passaic River Study Area. Hazardous substances, pollutants and contaminants released from the facility into the river present a risk to the environment and the humans who may ingest contaminated fish and shellfish. Therefore, Neu Holdings U.S. Corporation, as successor to Whippany Paper

Board Company may be potentially liable for response costs which the government may incur relating to the Lower Passaic River. In addition, responsible parties may be required to pay damages for injury to, destruction of, or loss of natural resources, including the cost of assessing such damages.

EPA previously, by letter dated September 11, 2006 notified Eden Wood Corporation as successor to Whippany Paper Board Company of potential liability under CERCLA for the Lower Passaic River Study Area, and by letter dated March 31, 2016, with respect to the lower 8.3 miles. Based on information provided by Neu Holdings U.S. Corporation, we have determined that the Neu Holding U.S. Corporation, not the entity now known as Eden Wood Corporation, is the correct corporate successor to Whippany Paper Board Company.

Remedial Action Consent Decree Negotiations/Allocation

OCC is currently conducting the remedial design for OU2, pursuant to an administrative settlement agreement and order on consent, CERCLA No. 02-2016-2021. On September 18, 2017, EPA notified the PRPs that the Agency had retained AlterEcho and its senior allocation specialist David Batson to perform an allocation for implementation of the remedy selected for the lower 8.3 miles of the Lower Passaic River Study Area. The goal of the Allocation is to provide the EPA with a basis for cash-out settlement offers and to identify those parties that should participate in consent decree negotiations for the performance and/or funding of the remedial action for OU2.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to you. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of your first contact with the Diamond Alkali Site, including the Lower Passaic River Study Area, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

Please note that because EPA has a potential claim against your company, you must include EPA as a creditor if it files for bankruptcy.

Resources and Information for Small Businesses

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may download a copy of the law at <http://www.gpo.gov/fdsys/pkg/PLAW-107publ118/pdf/PLAW-107publ118.pdf> and review EPA guidances regarding these exemptions at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www.epa.gov/compliance/compliance-assistance-centers>. Finally, EPA has developed a

fact sheet about the Small Business Regulatory Enforcement Fairness Act and information on resources for small businesses, which is available on the Agency's website at <http://www.epa.gov/compliance/small-business-resources-information-sheet>.

If you have any questions regarding this letter, you may contact Juan Fajardo via email at fajardo.juan@epa.gov or by phone at (212) 637-3132.

We appreciate and look forward to your prompt response to this letter.

Sincerely yours,



Eric Wilson
Deputy Director for Enforcement & Homeland Security
Emergency and Remedial Response Division

cc: Ryan Russell Kemper, Esq.
Thompson Coburn LLP